

Meta-Analysis of Research on Mediation Techniques

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The ABA Section of Dispute Resolution Task Force on Research on Mediator Techniques identified 47 studies from the prior four decades with empirical data analyzing effects of particular mediator actions on certain mediation outcomes. Here are key passages from the Report's executive summary:

The Task Force's review of the studies found that none of the categories of mediator actions has clear, uniform effects across the studies – that is, none consistently has negative effects, positive effects, or no effects – on any of the three sets of mediation outcomes. These outcome categories are “(1) settlement and related outcomes, (2) disputants' perceptions and relationships, and (3) attorneys' perceptions.”

Looking at the relative potential for positive versus negative effects, while bearing in mind the substantial likelihood of no effects, the following mediator actions appear to have a greater *potential* for positive effects than negative effects on *both* settlement and related outcomes *and* disputants' relationships and perceptions of mediation: (1) eliciting disputants' suggestions or solutions; (2) giving more attention to disputants' emotions, relationship, and sources of conflict; (3) working to build trust and rapport, expressing empathy or praising the disputants, and structuring the agenda; and (4) using pre-mediation caucuses focused on establishing trust. Some of these actions, however, have been examined in a relatively small number of studies and in only a subset of dispute types, primarily divorce, limited jurisdiction, community, and labor disputes.

The potential effects of other mediator actions appear more mixed. Recommending a particular settlement, suggesting settlement options, and offering evaluations or opinions have the potential for positive effects on settlement and on attorneys' perceptions of mediation, but have the potential for negative as well as positive effects on disputants' relationships and perceptions of mediation. Both caucusing during mediation and pressing or directive actions have the potential to increase settlement and related outcomes, especially in labor-management disputes; but pressing actions also have the potential for negative effects on settlement, and both sets of actions have the potential for negative effects on disputants' perceptions and relationships (emphasis in original).

It should not be surprising that empirical research can provide only weak generalizations – at best – about the effects of mediation techniques. Interactions in mediation are so complex, dynamic, and affected by so many contextual factors that mediators should be wary about making generalizations about mediation styles, strategies, techniques – you name it.

The effects of particular actions presumably depend on numerous contextual factors such as the parties' pre-existing relationship, history of the conflict, expectations about the process and outcome, participation of lawyers (if any), and role of constituents, among many others. Good mediation requires subtle judgments about what actions to take at particular moments – and there is no single right way to handle particular situations.

We would need clear categories to produce good empirical research linking mediator behavior and outcomes. The Task Force had to struggle with the fact that the studies used different definitions, making it harder to compare the findings of different studies.

The Task Force recommended developing standard concepts to help with research. It seems unlikely that our field could develop a working consensus in defining such concepts. But even if we could do so, quantitative research would not be able to produce strong, useful generalizations for the reasons I just mentioned.

For further discussion, see my post, [Lessons From the ABA's Excellent Report on Mediator Techniques](#). This post highlights the benefits of using qualitative methods to study mediation and other dispute resolution processes.